

## **REMARKS**

In the Office Action dated May 26, 2004, Claims 3 and 4 have been deemed allowable. Claims 1, 2 and 5 are amended herein to facilitate advancement of the application. No new matter has been added via this amendment. Claims 8-11 are withdrawn based on the Restriction Requirement which the Examiner has made final. Applicants have not abandoned the withdrawn subject matter and reserve the right to file a divisional application thereto. Claims 1-7 remain in this application.

Claims 1, 2 and 5 have been rejected under 35 U.S.C. §102(b) as defining subject matter which is allegedly anticipated by Sugumu, et al. (CA 127:190752) (hereinafter 'Sugumu'), Yu, et al. (CA 115:149732) (hereinafter 'Yu'), Antonio, et al. (CA 110:192750) (hereinafter 'Antonio'), Horodniak, et al. (CA 89:100160) (hereinafter Horodniak), Blank, et al. (CA 71:124455 and CA 69:36049) (hereinafter Blank), Sen, et al. (CA 52:13734c-I) (hereinafter 'Sen'), Noda (CA 52:4018f-g) (hereinafter 'Noda'). Claims 6 and 7 were objected to as being dependent upon a rejected base claim.

According to the Examiner, Sugumu teaches a 7-nitro-10H-phenoxazine-1-carboxylic acid. As amended, Claim 1 does not contain any nitro group at the R3 position when R1, R2 and R4 are hydrogen. As amended, Claim 2 does not contain a nitro group at the R3 position when R2 and R4 are hydrogen or when R4 is chloro. Consequently, the present invention cannot be a 7-nitro-10H-phenoxazine-1-carboxylic acid. Therefore, Sugumu cannot anticipate the claims of the present invention.

According to the Examiner, Yu teaches 10H-phenoxazine-1-carboxylic acid and 2-methoxy-10H-phenoxazine-1-carboxylic acid. As amended, for Claims 1, 2, and 5, at least one of R1, R2, R3 and R4 must be other than hydrogen. As amended, R2 in Claims

1, 2, 5 cannot be a methoxy group. Consequently, the present invention cannot be either a 10H-phenoxazine-1-carboxylic acid or a 2-methoxy-10H-phenoxazine-1-carboxylic acid. Therefore, Yu cannot anticipate the claims of the present invention.

According to the Examiner, Antonio teaches 10-ethyl-10H-phenoxazine-1-carboxylic acid. As amended, for Claims 1 and 2, R1 cannot be ethyl when R2, R3 and R4 are hydrogen. As amended, phenoxazinecarboxylic acid has been deleted from Claim 5. Consequently, the present invention cannot be 10-ethyl-10H-phenoxazine-1-carboxylic acid. Therefore, Antonio cannot anticipate the claims of the present invention.

According to the Examiner, Horodniak teaches 8-(trifluoromethyl)-10H-phenoxazine-1-carboxylic acid. As amended, for Claims 1 and 2, R4 cannot be trifluoromethyl when R1, R2 and R3 are hydrogen. As amended, phenoxazinecarboxylic acid has been deleted from Claim 5. Consequently, the present invention cannot be a 8-(trifluoromethyl)-10H-phenoxazine-1-carboxylic acid. Therefore, Horodniak cannot anticipate the claims of the present invention.

According to the Examiner, Blank teaches 8-chloro-10H-phenoxazine-1-carboxylic acid; 7,8-dichloro-10H-phenoxazine-1-carboxylic acid; 8-methyl-phenoxazine-1-carboxylic acid; 10H-phenoxazine-1-carboxylic acid; 6-(trifluoromethyl)-phenoxazine-1-carboxylic acid; 7-(trifluoromethyl)-phenoxazine-1-carboxylic acid; 7-fluoro-phenoxazine-1-carboxylic acid; 8-methyl-phenoxazine-1-carboxylic acid; 8-phenyl-10H-phenoxazine-1-carboxylic acid; 8-cyano-phenoxazine-1-carboxylic acid; phenoxazine-1,8-dicarboxylic acid. As amended, for Claims 1 and 2, R3 cannot be methyl, chloro, trifluoro, fluoro, or carboxylic acid when R1, R2 and R4 are hydrogen or when R4 is chloro. As amended, for Claims 1 and 2, R4 cannot be methyl, phenyl,

cyano, or carboxylic acid when R1, R2 and R3 are hydrogen. As amended, phenoxazinecarboxylic acid has been deleted from Claim 5. Therefore the present invention cannot be a 8-chloro-10H-phenoxazine-1-carboxylic acid; 7,8-dichloro-10H-phenoxazine-1-carboxylic acid; 8-methyl-phenoxazine-1-carboxylic acid; 10H-phenoxazine-1-carboxylic acid; 6-(trifluoromethyl)-phenoxazine-1-carboxylic acid; 7-(trifluoromethyl)-phenoxazine-1-carboxylic acid; 7-fluoro-phenoxazine-1-carboxylic acid; 8-methyl-phenoxazine-1-carboxylic acid; 8-phenyl-10H-phenoxazine-1-carboxylic acid; 8-cyano-phenoxazine-1-carboxylic acid; or a phenoxazine-1,8-dicarboxylic acid.

Therefore, Blank cannot anticipate the claims of the present invention.

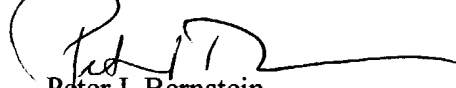
According to the Examiner Sen teaches 3-nitro-10H-phenoxazine-1-carboxylic acid. As amended, for Claim 1 and 2, R2 cannot be a nitro group when R1, R3 and R4 are hydrogen. As amended, phenoxazinecarboxylic acid has been deleted from Claim 5. Consequently, the present invention cannot be a 3-nitro-10H-phenoxazine-1-carboxylic acid. Therefore, Sen cannot anticipate the claims of the present invention.

According to the Examiner, Noda teaches the sodium salt of 3-nitro-phenoxazine-1-carboxylic acid. As amended, phenoxazinecarboxylic acid has been deleted from Claim 5. Consequently, the present invention cannot be a sodium salt of 3-nitro-10H-phenoxazine-1-carboxylic acid. Therefore, Noda cannot anticipate the claims of the present invention.

Applicants have amended Claims 1, 2 and 5 herein to specifically point out the inherent distinctions of the present invention over the references cited by the Examiner. Thus, applicants respectfully submit that the 35 U.S.C. § 102 rejections are obviated and withdrawal thereof is requested.

Accordingly, the present invention is believed to be in condition for allowance  
which action is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter I. Bernstein", with a long horizontal flourish extending to the right.

Peter I. Bernstein

Registration No. 43,497

Scully, Scott, Murphy & Presser  
400 Garden City Plaza  
Garden City, New York 11530  
(516) 742-4343  
PIB/MMR/rjl